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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 130219149-3524-03]

RIN 0648-BC97

Revisions to Framework Adjustment 50 to the Northeast Multispecies Fishery Management Plan and Sector Annual Catch Entitlements; Updated Annual Catch Limits for Sectors and the Common Pool for Fishing Year 2013

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary final rule; adjustment to specifications.

SUMMARY: Based on the final Northeast (NE) multispecies sector rosters submitted as of May 1, 2013, we are adjusting the fishing year (FY) 2013 specification of annual catch limits for commercial groundfish vessels, as well as sector annual catch entitlements for groundfish stocks. This revision to fishing year 2013 catch levels is necessary to account for changes in the number of participants electing to fish in either sectors or the common pool fishery.

DATES: Effective [Insert date of filing at the office of the Federal Register], through April 30, 2014.

FOR FURTHER INFORMATION CONTACT: Allison Murphy, Fishery Policy Analyst, (978) 281-9122.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) developed Amendment 16 to the NE Multispecies Fishery Management Plan

(FMP), in part, to establish a process for setting groundfish annual catch limits (also referred to as ACLs or catch limits) and accountability measures. The Council has a biennial review process to develop catch limits and revise management measures. Framework Adjustment (FW) 50 and concurrent emergency actions set annual catch limits for nine groundfish stocks and three jointly managed U.S./Canada stocks for FY 2013-2015. We recently partially approved FW 50, which became effective on May 1, 2013 (78 FR 26172; May 3, 2013). In addition to the specification set by FW 50, we took emergency action to set the catch limits for Georges Bank (GB) yellowtail flounder and white hake. For more information on these emergency actions, please see the preamble to FW 50.

Along with FW 50 and the concurrent emergency rule, we recently approved FY 2013 sector operations plans and allocations (78 FR 25591; May 2, 2013; “sector rule”). A sector receives an allocation of each stock, or annual catch entitlement (referred to as ACE, or allocation), based on its members’ catch histories. State-operated permit banks also receive an allocation that can be transferred to qualifying sector vessels (for more information, see the final rule implementing Amendment 17 (77 FR 16942; March 23, 2012)). The sum of all sector and state-operated permit bank allocations is referred to as the sector sub-ACL in the FMP. Whatever groundfish allocation remains after sectors and state-operated permit banks receive their allocations is then allocated to vessels not enrolled in a sector (referred to as the common pool). This allocation is also referred to as the common pool sub-ACL.

Changes in sector membership require ACL and ACE adjustments. This rule adjusts the FY 2013 sector and common pool allocations based on final sector membership as of May 1, 2013. Permitted vessels that wish to fish in a sector must enroll by December 1 of

each year, with the fishing year beginning the following May 1 and lasting through April 30 of the next year. However, due to a delay in distributing each vessel's potential contribution to a sector's quota for FY 2013, we delayed the deadline to join a sector until March 29, 2013. Because this deadline followed the publication of the FW 50 and sector proposed rules, FY 2012 membership was used to estimate sector ACEs for FY 2013. In addition, vessels had until April 30, 2013 (the day before the beginning of FY 2013) to drop out of a sector and fish in the common pool. If the sector allocation increases as a result of sector membership changes, the common pool allocation decreases – the opposite is true as well. Because sector membership has changed since FY 2012, which was used in the FW 50 and sector rules, we need to update the allocations to all sectors and to the common pool.

The final number of permits enrolled in a sector or state-operated permit bank for FY 2013 is 851 (the same number of permits enrolled in FY 2012 and a decrease of 3 permits from March 29, 2013). All sector allocations assume that each NE multispecies vessel enrolled in a sector has a valid permit for FY 2013. Tables 1, 2, and 3 (below) explain the revised FY 2013 allocations as a percentage and absolute amount (in metric tons and pounds).

Table 4 compares the preliminary allocations based on FY 2012 membership published in the FW 50 proposed and final rules, with the revised allocations based on the final sector and state-operated permit bank rosters as of May 1, 2013. The table shows that changes in sector allocations due to updated rosters range from a decrease of 0.32 percent of Gulf of Maine (GOM) haddock, to an increase of 4.04 percent of Southern New England/Mid-Atlantic (SNE/MA) yellowtail flounder. Common pool allocation adjustments range between a 16.17-percent decrease in SNE/MA yellowtail flounder, to a 59.09-percent

increase in GOM haddock. The changes in the common-pool allocations are greater because the common pool has a significantly lower allocation for all stocks, so even small changes appear large when viewed as a percentage increase or decrease.

Table 1. FINAL PERCENTAGE (%) OF ACE FOR EACH SECTOR BY STOCK FOR FY 2013<sup>1</sup>

Sector Name (Defined Below)	Number of Permits	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	Cape Cod (CC)/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	108	27.71	2.43	5.76	1.84	0.01	0.30	2.75	0.91	2.10	0.03	3.73	1.65	2.74	5.68	7.38
MCCS	46	0.21	4.59	0.04	2.55	0.00	0.66	1.05	7.56	5.06	0.01	1.96	0.19	2.50	4.40	3.80
Maine	11	0.13	1.15	0.04	1.12	0.01	0.03	0.32	1.16	0.73	0.00	0.42	0.02	0.82	1.65	1.69
NCCS	26	0.17	0.75	0.12	0.35	0.84	0.73	0.61	0.15	0.22	0.07	0.90	0.30	0.43	0.79	0.42
NEFS 2	82	6.19	18.38	11.94	16.57	1.96	1.51	19.37	8.10	12.98	3.30	18.47	3.71	16.04	6.32	12.19
NEFS 3	79	1.25	14.38	0.15	9.64	0.01	0.36	8.55	4.06	2.85	0.03	9.32	0.77	1.34	4.73	6.75
NEFS 4	50	4.14	9.60	5.32	8.35	2.16	2.27	5.47	9.29	8.49	0.69	6.24	0.87	6.64	8.06	6.14
NEFS 5	31	0.79	0.01	1.05	0.29	1.61	22.98	0.48	0.49	0.67	0.52	0.07	12.37	0.08	0.12	0.10
NEFS 6	21	2.86	2.91	2.92	3.83	2.70	5.17	3.56	3.88	5.17	1.46	4.37	1.89	5.31	3.91	3.29
NEFS 7	23	5.21	0.39	4.95	0.47	11.29	4.57	2.86	3.59	3.29	14.86	0.83	6.35	0.59	0.83	0.73
NEFS 8	20	6.15	0.49	5.67	0.21	10.90	5.84	6.40	1.65	2.54	14.63	3.35	10.08	0.54	0.50	0.60
NEFS 9	60	14.24	1.73	11.60	4.79	26.78	7.96	10.41	8.27	8.28	39.50	2.43	18.62	5.83	4.15	4.23
NEFS 10	44	0.73	5.26	0.25	2.54	0.02	0.55	12.82	1.78	2.43	0.01	26.97	0.75	0.55	0.91	1.39
NEFS 11	42	0.39	11.21	0.04	2.35	0.00	0.02	2.10	1.35	1.47	0.00	1.93	0.02	0.94	2.34	6.46
NEFS 12	11	0.02	2.42	0.00	0.86	0.00	0.00	0.48	0.75	0.61	0.00	0.32	0.00	1.06	2.50	2.96
NEFS 13	54	7.96	0.95	16.08	0.99	24.97	18.92	5.03	5.16	6.27	7.46	2.34	11.04	3.98	1.74	2.27
NH	4	0.00	1.14	0.00	0.03	0.00	0.00	0.02	0.03	0.01	0.00	0.06	0.00	0.02	0.08	0.11
SHS 1	118	19.69	19.49	33.09	42.18	13.19	8.24	12.84	39.31	34.27	16.32	10.27	18.46	50.02	50.42	38.73
SHS 3	21	0.44	0.52	0.64	0.18	2.33	3.13	2.08	0.75	0.82	0.49	2.31	1.67	0.19	0.15	0.06
Sectors Total	851	98.27	97.80	99.68	99.15	98.80	83.23	97.20	98.25	98.25	99.37	96.30	88.77	99.60	99.29	99.30

-Georges Bank Cod Fixed Gear Sector (FGS), Maine Coast Community Sector (MCCS), Maine Permit Bank (Maine), Northeast Coastal Communities Sector (NCCS), , Northeast Fishery Sectors (NEFS), New Hampshire Permit Bank (NH), and Sustainable Harvest Sector (SHS)

<sup>1</sup>All ACE values for sectors outlined in Table 1 assume that each sector permit is valid for FY 2013.

Table 2. FINAL ACE FOR EACH SECTOR BY STOCK FOR FY 2013 (mt)<sup>12</sup>

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	25	475	20	216	1293	3	0	2	13	13	13	1	27	20	277	219	951
MCCS	0	4	38	1	9	5	0	4	5	107	31	0	14	2	253	169	490
Maine	0	2	10	2	10	2	0	0	2	17	4	0	3	0	83	64	218
NCCS	0	3	6	5	27	1	1	4	3	2	1	2	6	4	44	30	54
NEFS 2	6	106	153	448	2679	31	2	9	93	115	79	116	132	45	1625	243	1572
NEFS 3	1	22	119	5	33	18	0	2	41	58	17	1	67	9	136	182	870
NEFS 4	4	71	80	200	1193	16	3	13	26	132	52	24	45	11	673	310	792
NEFS 5	1	13	0	40	236	1	2	131	2	7	4	18	0	150	8	5	14
NEFS 6	3	49	24	110	656	7	3	29	17	55	32	51	31	23	538	151	425
NEFS 7	5	89	3	186	1112	1	13	26	14	51	20	524	6	77	59	32	94
NEFS 8	6	105	4	213	1273	0	13	33	31	23	16	516	24	122	54	19	77
NEFS 9	13	244	14	436	2604	9	31	45	50	117	50	1394	17	225	591	160	545
NEFS 10	1	12	44	9	56	5	0	3	61	25	15	0	193	9	56	35	180
NEFS 11	0	7	93	1	8	4	0	0	10	19	9	0	14	0	95	90	833
NEFS 12	0	0	20	0	1	2	0	0	2	11	4	0	2	0	107	96	382
NEFS 13	7	136	8	604	3609	2	29	108	24	73	38	263	17	134	403	67	293
NH	0	0	9	0	0	0	0	0	0	0	0	0	0	0	2	3	14
SHS 1	18	338	162	1242	7425	79	15	47	61	558	209	576	73	223	5068	1941	4994
SHS 3	0	8	4	24	144	0	3	18	10	11	5	17	16	20	20	6	8
Sectors Total	90	1685	812	3742	22369	185	115	474	466	1395	599	3506	688	1074	10092	3822	12802
Common Pool	2	30	18	12	73	2	1	96	13	25	11	22	26	136	40	27	91

<sup>1</sup>All ACE values for sectors outlined in Table 2 assume that each sector permit is valid for FY 2013.

<sup>2</sup>These values do not include any potential ACE carryover or deductions from FY 2012 sector ACE underages or overages. Adjustments for any carryover or deductions will be made in a future action following reconciliation.

Table 3. FINAL ACE FOR EACH SECTOR BY STOCK FOR FY 2013 (1,000 lb)<sup>12</sup>

Sector Name	GB Cod East	GB Cod West	GOM Cod	GB Haddock East	GB Haddock West	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
FGS	56	1048	44	477	2852	8	0	4	29	28	28	2	59	44	612	482	2097
MCCS	0	8	84	3	20	11	0	8	11	237	68	1	31	5	559	373	1080
Maine	0	5	21	4	22	5	0	0	3	36	10	0	7	0	184	140	480
NCCS	0	6	14	10	60	1	2	9	6	5	3	5	14	8	96	67	120
NEFS 2	13	234	336	988	5905	68	5	19	205	254	175	257	291	99	3583	537	3465
NEFS 3	3	47	263	12	72	40	0	4	90	127	38	2	147	21	299	401	1917
NEFS 4	8	156	176	440	2630	34	6	29	58	291	114	54	98	23	1483	684	1746
NEFS 5	2	30	0	87	521	1	4	289	5	15	9	40	1	330	17	10	30
NEFS 6	6	108	53	242	1446	16	7	65	38	121	70	113	69	51	1186	332	936
NEFS 7	11	197	7	410	2451	2	29	57	30	112	44	1155	13	169	131	70	206
NEFS 8	12	232	9	469	2806	1	28	73	68	52	34	1138	53	269	120	43	170
NEFS 9	29	538	32	960	5741	20	69	100	110	259	111	3073	38	497	1303	352	1202
NEFS 10	1	28	96	21	124	10	0	7	135	56	33	1	425	20	122	77	396
NEFS 11	1	15	205	3	18	10	0	0	22	42	20	0	30	0	209	199	1837
NEFS 12	0	1	44	0	1	4	0	0	5	23	8	0	5	0	237	212	842
NEFS 13	16	301	17	1331	7958	4	64	238	53	162	84	580	37	294	889	148	646
NH	0	0	21	0	0	0	0	0	0	1	0	0	1	0	4	7	32
SHS 1	40	745	357	2738	16370	174	34	104	136	1231	461	1269	162	493	11172	4279	11009
SHS 3	1	17	9	53	318	1	6	39	22	23	11	38	36	44	43	13	17
Sectors Total	199	3716	1790	8249	49316	409	254	1046	1026	3076	1321	7729	1517	2368	22249	8425	28225
Common Pool	4	65	40	27	160	4	3	211	30	55	24	49	58	300	88	60	200

<sup>1</sup> All ACE values for sectors outlined in Table 3 assume that each sector permit is valid for FY 2013.

<sup>2</sup> These values do not include any potential ACE carryover or deductions from FY 2012 sector ACE underages or overages. Adjustments for any carryover or deductions will be made in a future action following reconciliation.

Table 4. COMPARISON OF ALLOCATIONS BETWEEN THE FW 50 FINAL RULE, AND MAY 1, 2013, SECTOR ROSTERS

(mt)<sup>1</sup>

	GB Cod	GOM Cod	GB Haddock	GOM Haddock	GB Yellowtail Flounder	SNE/MA Yellowtail Flounder	CC/GOM Yellowtail Flounder	Plaice	Witch Flounder	GB Winter Flounder	GOM Winter Flounder	SNE/MA Winter Flounder	Redfish	White Hake	Pollock
Total Commercial Allocation	1807	830	26196	187	116.8	570	479	1420	610	3528	714.7	1210	10132	3949	12893

FY 2013 Common Pool Allocation based on FY 2012 sector membership	30	16	72	1	1.3	114	12	24	9	20	24	142	41	31	83
Adjusted FY 2013 Common Pool Allocation	32	18	85	2	1	96	13	25	11	22	26	136	40	27	91
% Change	6.67%	14.24%	18.06%	59.09%	7.69%	-16.17%	11.69%	3.75%	18.44%	10.87%	10.04%	-4.27%	-2.11%	-11.73%	9.04%

FY 2013 Sector Allocation based on FY 2012 sector membership	1777	814	26124	186	115.4	456	467	1396	601	3508	690	1068	10091	3818	12810
Adjusted FY 2013 Sector Allocation	1775	812	26111	185	115	474	466	1395	599	3506	688	1074	10092	3822	12802
% Change	-0.11%	-0.28%	-0.05%	-0.32%	0.00%	4.04%	-0.30%	-0.06%	-0.28%	-0.06%	-0.25%	0.57%	0.01%	0.10%	-0.06%

<sup>1</sup> All values for sectors outlined in Table 4 assume that each sector permit is valid for FY 2013.



It is important to point out that this is only a temporary final rule. After we finish reconciling differences in catch accounting between our data and each sector manager's data, each sector will have 2 weeks to trade FY 2012 ACE to account for any overharvesting during that period. After that 2-week trading window, a sector that still has exceeded its FY 2012 allocation will have its FY 2013 allocation reduced, pursuant to regulatory requirements. Because data reconciliation and the 2-week trading window take place after the new fishing year has begun, we reserve 20 percent of each sector's FY 2013 allocation until FY 2012 catch data are reconciled, with the exception of SNE/MA winter flounder, which was newly allocated for FY 2013. This reserve is held to ensure that each sector has sufficient ACE to balance any overages from the previous fishing year. For FY 2013, sectors are also able to carry over up to 10 percent of their initial allocation of all regulated stocks to the next fishing year, with the exception of GOM cod, which can be carried over only up to 1.85 percent. We will publish a final follow-up rule detailing any carryover of FY 2012 sector allocation or reduction in FY 2013 allocation resulting from sectors under or overharvesting their allocations.

FW 50 also specifies incidental catch limits (or incidental total allowable catches, "TACs") applicable to the common pool and NE multispecies Special Management Programs for FY 2013–2015, including the B day-at-sea (DAS) Program. Special Management Programs are designed to allow fishing for healthy stocks that can support additional fishing effort without undermining the other goals of the FMP. Incidental catch limits are specified to limit catch of certain stocks of concern for common pool vessels fishing in the Special Management Programs. Because these incidental catch

limits are based on the changed common-pool allocation, they also must be revised.

Final incidental catch limits are included in Tables 5-8 below.

Table 5. FY 2013 Common Pool Incidental Catch TACs

Stock	Percentage of Common Pool sub- ACL	Incidental Catch TAC (mt)
GB cod	2	0.6
GOM cod	1	0.2
GB yellowtail flounder	2	0.03
CC/GOM yellowtail flounder	1	0.1
American Plaice	5	1.3
Witch Flounder	5	0.6
SNE/MA winter flounder	1	1.4

Table 6. Distribution of Common Pool Incidental Catch TACs to each Special Management Program

Stock	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern U.S./CA Haddock SAP	Southern Closed Area II Haddock SAP
GB cod	50%	16%	34%	
GOM cod	100%	NA	NA	
GB yellowtail flounder	50%	NA	50%	
CC/GOM yellowtail flounder	100%	NA	NA	
American Plaice	100%	NA	NA	
Witch Flounder	100%	NA	NA	
SNE/MA winter flounder	100%	NA	NA	

Table 7. FY 2013 Common Pool Incidental Catch TACs for Each Special Management Program (mt)

Stock	Regular B DAS Program	Closed Area I Hook Gear Haddock SAP	Eastern U.S./Canada Haddock SAP
GB cod	0.3	0.1	0.2
GOM cod	0.2	n/a	n/a
GB yellowtail flounder	0.01	n/a	0.01
CC/GOM yellowtail flounder	0.1	n/a	n/a
American Plaice	1.2	n/a	n/a
Witch Flounder	0.5	n/a	n/a
SNE/MA winter flounder	1.4	n/a	n/a

Table 8. FY 2013 Common Pool Regular B DAS Program Quarterly Incidental Catch TACs (mt)

	1st Quarter (13%)	2nd Quarter (29%)	3rd Quarter (29%)	4th Quarter (29%)
GB cod	0.04	0.09	0.09	0.09
GOM cod	0.02	0.05	0.05	0.05
GB yellowtail flounder	0.002	0.004	0.004	0.004
CC/GOM yellowtail flounder	0.02	0.04	0.04	0.04
American Plaice	0.16	0.36	0.36	0.36
Witch Flounder	0.07	0.15	0.15	0.15
SNE/MA winter flounder	0.18	0.39	0.39	0.39

#### Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the NE Multispecies FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B), we find good cause to waive prior public notice and opportunity for public comment on the catch limit and allocation adjustments because allowing time for notice and comment is impracticable and contrary to the public interest. We also find good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective upon filing.

Notice and comment are impracticable and contrary to the public interest because a delay would potentially impair achievement of the management plan's objectives of preventing overfishing and achieving optimum yield by staying within ACLs or allocations. The proposed and final rules for FY 2013 sector operations plans and contracts explained the need and likelihood for adjustments of sector and common pool allocations based on final sector rosters. No comments were received on the potential for these adjustments, which provide an accurate accounting of a sector's or common pool's allocation at this time. If this rule is not effective immediately, the sector and common pool vessels will be operating under incorrect information on the catch limits for each stock for sectors and the common pool. This could cause negative economic impacts to the both sectors and the common pool, depending on the size of the allocation, the degree of change in the allocation, and the catch rate of a particular stock. Further, these adjustments are based purely on objective sector enrollment data and are not subject to NMFS' discretion, so there would be no benefit to allowing time for prior notice and comment.

Waiving the 30-day delay in effectiveness allows harvesting in a manner that prevents catch limits of species from being exceeded in fisheries that are important to coastal communities. Until the final stock allocations are made, the affected fishing entities will not know how many fish of a particular stock they can catch without going over their ultimate limits. Fishermen may make both short- and long-term business decisions based on the catch limits in a given sector or the common pool. Any delays in adjusting these limits may cause the affected fishing entities to slow down, or speed up, their fishing activities during the interim period before this rule becomes effective. Both of these reactions could negatively affect the fishery and the businesses and communities that depend on them. The fishing industry and the communities it supports could be affected by potentially reducing harvests and delaying profits. Lastly, the catch limit and allocation adjustments are not controversial and the need for them was clearly explained in the proposed and final rules for FY 2013 sector operations plans and contracts. As a result, the NE multispecies permit holders are expecting these adjustments and awaiting their implementation. Therefore, it is important to implement adjusted catch limits and

allocations as soon as possible. For these reasons, we are waiving the public comment period and delay in effectiveness for this rule, pursuant to 5 U.S.C. 553(b)(3)(B) and (d), respectively.

Authority: 16 U.S.C. 1801 et seq.

Dated: June 5, 2013.

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Alan D. Risenhoover, Director, Office of Sustainable Fisheries,  
performing the functions and duties of the Deputy Assistant Administrator  
for Regulatory Programs, National Marine Fisheries Service.

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